

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

LAURIE THOMAS, ALISON KAVULAK,
JEN MACLEOD, MARY NARVAEZ,
ALISON FLEISSNER, EMILY
BIGAOUETTE, LAURA EGGNATZ,
TERESA HAGMAIER, and NICOLE
FALLON,

Case No. 1:21-cv-0133-TJM-CFH

*Individually and on Behalf of All Others
Similarly Situated,*

Plaintiff,

v.

BEECH-NUT NUTRITION COMPANY,

Defendant.

LAURA PEEK,

Case No. 1:21-cv-00167-TJM-CFH

*Individually and on Behalf of All Others
Similarly Situated,*

Plaintiff,

v.

BEECH-NUT NUTRITION COMPANY,
Defendant.

ROBYN MOORE and GABRIELLE STUVE,

*On Behalf of Themselves and All Others
Similarly Situated,*

Plaintiff,

v.

BEECH-NUT NUTRITION COMPANY,

Defendant.

MATTIA DOYLE,

*On Behalf of Herself and All Others Similarly
Situated,*

Plaintiff,

v.

BEECH-NUT NUTRITION CO.,

Defendant.

LEE BOYD,

*Individually and On Behalf of All Others
Similarly Situated,*

Plaintiffs,

v.

BEECH-NUT NUTRITION COMPANY,

Defendant.

Case No. 1:21-cv-00183-TJM-CFH

Case No. 1:21-CV-00186-TJM-CFH

Case No. 1:21-cv-00200-TJM-CFH

JEREMY CANTOR; ASHLEY ALLEN;
EMILY BACCARI; KAITLYNN CARSON;
AMBER CAUDILL; NEISHA DANIELS;
JILLIAN GEFFKEN; HANNAH GRANDT;
DOMINICK GROSSI, ANTHONY
HARRISON; CHRISTINA HOLLAND;
HEATHER HYDEN; HEATHER
MCCORMICK; HALEY SAMS; and VITO
SCAROLA,

*On Behalf of Themselves and All Others
Similarly Situated,*

Plaintiffs,

v.

BEECH-NUT NUTRITION COMPANY,

Defendant.

MICHAEL MOTHERWAY,

*Individually and On Behalf of All Others
Similarly Situated,*

Plaintiff,

v.

BEECH-NUT NUTRITION COMPANY,

Defendant.

Case No. 1:21-cv-00213-TJM-CFH

Case No. 1:21-cv-00229-TJM-CFH

KATHEY HENRY,

*Individually and On Behalf of All Others
Similarly Situated,*

Plaintiff,

v.

BEECH-NUT NUTRITION CO.,

Defendant.

Case No. 1:21-cv-00227-TJM-CFH

KELSEY GANCARZ,

*Individually and On Behalf of All Others
Similarly Situated,*

Plaintiff,

v.

BEECH-NUT NUTRITION CO.,

Defendant.

Case No. 1:21-cv-00258-TJM-CFH

ATASHA SMILEY,

Individually and On Behalf of All Others
Similarly Situated,

Plaintiff,

v.

BEECH-NUT NUTRITION CO.,

Defendant.

Case No. 1:21-cv-00271-TJM-CFH

NAJAH HENRY, CHANEL JACKSON,
ALEXIA SIAS, HOLLY BUFFINTON, and
CONSTANCE VENABLE

Individually and On Behalf of All Others
Similarly Situated,

Plaintiff,

v.

BEECH-NUT NUTRITION CO.,

Defendant.

Case No. 1:21-cv-00285-TJM-CFH

**PLAINTIFFS' STIPULATION [AND PROPOSED ORDER] TO CONSOLIDATE
ACTIONS UNDER FED. R. CIV. P. 42(a)**

WHEREAS, the above-captioned related proposed consumer class actions are pending before the United States District Court for the Northern District of New York, entitled: *Thomas v. Beech-Nut Nutrition Co.*, Case No. 1:21-cv-00133-TJM-CFH (“*Thomas*”), filed February 5, 2021; *Peek v. Beech-Nut Nutrition Co.*, Case No. 1:21-cv-00167-TJM-CFH (“*Peek*”), filed February 11, 2021; *Moore v. Beech-Nut Nutrition Co.*, Case No. 1:21-cv-00183-TJM-CFH (“*Moore*”), filed February 16, 2021; *Doyle v. Beech-Nut Nutrition Co.*, Case No. 1:21-cv-00186-TJM-CFH (“*Doyle*”), filed February 18, 2021; *Boyd v. Beech-Nut Nutrition Co.*, Case No. 1:21-cv-00200-TJM-CFH (“*Boyd*”), filed February 22, 2021; *Cantor v. Beech-Nut Nutrition Co.*, Case No. 1:21-cv-00213-TJM-CFH (“*Cantor*”), filed February 24, 2021; *Motherway v. Beech-Nut Nutrition Co.*, Case No. 1:21-cv-00229-TJM-CFH (“*Motherway*”), filed February 26, 2021; *Henry v. Beech-Nut Nutrition Co.*, Case No. 1:21-cv-00227-TJM-CFH (“*Henry*”), filed February 26, 2021; *Gancarz v. Beech-Nut Nutrition Co.*, Case No. 1:21-cv-00258-TJM-CFH (“*Gancarz*”), filed March 4, 2021;

Smiley v. Beech-Nut Nutrition Co., Case No. 1:21-cv-00271-TJM-CFH (“*Smiley*”), filed March 9, 2021; and *Henry v. Beech-Nut Nutrition Co.*, Case No. 1:21-cv-00285-TJM-CFH (“*Henry II*”), filed March 11, 2021 (together the “Related Actions”) and collectively all plaintiffs are referred to herein as “Plaintiffs.”

WHEREAS, Plaintiffs assert the Related Actions arise out of the same set of operative facts and assert similar legal claims against Defendant Beech-Nut Nutrition, Co. (“Beech-Nut” or “Defendant”), alleging that Beech-Nut has engaged in deceptive trade practices with respect to the marketing and sale of its baby food products (the “Baby Foods”) by failing to disclose that they contain levels of toxic heavy metals, including arsenic, lead, cadmium, and mercury (the “Heavy Metals”);

WHEREAS, Plaintiffs assert that each Related Action seeks, *inter alia*, injunctive relief barring Beech-Nut from continuing the deceptive practices it is accused of as well as monetary damages compensating Plaintiffs and other consumers for the purchase of the Baby Foods;

WHEREAS, Plaintiffs in each Related Action agree that consolidation of the Related Actions under Fed. R. Civ. P. 42(a) is appropriate because Plaintiffs contend they involve common questions of law and fact, arise from the same events, name the same Defendant, and will involve substantially the same discovery;

WHEREAS, consolidation under Rule 42(a) will eliminate duplicative discovery and the possibility of inconsistent rulings on class certification, *Daubert* motions, and other pretrial matters, and conserve judicial and party resources;

WHEREAS, Beech-Nut has advised the undersigned counsel for *Thomas* that although Beech-Nut vigorously disputes the merits of the allegations proffered against it in these lawsuits, Beech-Nut will not oppose consolidation of the lawsuits Plaintiffs describe as “Related Actions”

under Fed. R. Civ. P. 42(a), while expressly reserving all of its rights, remedies, defenses, objections, and legal arguments;

NOW THEREFORE, the Plaintiffs through their respective counsel and subject to the Court's approval hereby stipulate that:

1. The *Thomas, Peek, Moore, Doyle, Boyd, Cantor, Motherway, Henry, Gancarz, Smiley and Henry II* actions currently pending in the Northern District of New York and any other action arising out of the same or similar operative facts now pending or hereafter filed in, removed to, or transferred to this District shall be consolidated pursuant to Fed. R. Civ. P. 42(a) before the Honorable Thomas J. McAvoy (hereafter the "Consolidated Action").

2. All papers filed in the Consolidated Action shall be filed under Case No. 1:21-cv-00133-TJM-CFH and shall bear the following caption:

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK**

*IN RE: BEECH-NUT NUTRITION COMPANY
BABY FOOD LITIGATION*

Master File No. 1:21-cv-00133-TJM-CFH

This Document Relates To:

_____ /

3. The case file for the Consolidated Action will be maintained under Master File No. 1:21-cv-00133-TJM-CFH. When a pleading is intended to apply to all actions to which this Order applies, the words "All Actions" shall appear immediately after the words "This Document Relates

To:" in the caption described above. When a pleading is not intended to apply to all actions, the docket number for each individual action to which the paper is intended to apply and the last name of the first-named plaintiff in said action shall appear immediately after the words "This Document Relates To:" in the caption identified above, for example, "1:21-cv-00133-TJM-CFH (*Thomas*)."

4. Any action subsequently filed, transferred or removed to this Court that the Court determines arises out of the same or similar operative facts as the Consolidated Action will be, with the Court's approval, consolidated with the Consolidated Action for pre-trial purposes. Any party may file a Notice of Related Action pursuant to N.D.N.Y. Gen. Order No. 12 whenever a party believes a case that should be consolidated into this action is filed in, or transferred to, this District. If the Court determines that the case is related and should be consolidated, the clerk shall:

- a. place a copy of this Order in the separate file for such action;
- b. serve on Plaintiffs' counsel in the new case a copy of this Order;
- c. direct that this Order be served upon defendants in the new case; and
- d. make the appropriate entry in the Master Docket.

5. Beech-Nut need not file a response to the complaint in each Related Action and instead shall answer, move or otherwise respond to any Consolidated Complaint no later than sixty (60) days following service of the Consolidated Complaint, or by no later than May 15, 2021, whichever is later.

IT IS SO STIPULATED.

Dated: March 16, 2021

Respectfully submitted,

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[PROPOSED] ORDER

PURSUANT TO STIPULATION, IT IS SO ORDERED

Date: _____

Hon. Thomas J. McAvoy
United States District Judge